

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009SP3238
)	ALS NO.: 09-0560
PAULA JOHNSON,)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini presiding, upon Paula Johnson's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2009SP3238; and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioner's Request, and the Respondent's response to the Petitioner's Request; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that:

- (1) The Respondent's dismissal of the Petitioner's charge is **VACATED**, and the charge is **REINSTATED** and **REMANDED** to the Respondent for **FURTHER INVESTIGATION** as herein instructed.

In support of which determination the Commission states the following findings of fact and reasons:

1. On April 3, 2009, the Petitioner filed a charge of discrimination with the Respondent, in which she alleged Intergovernmental Grants Department ("Intergovernmental") denied her the full and equal enjoyment of its facilities and services because of her physical disability, in violation of Section 5-102(C) of the Illinois Human Rights Act (the "Act"). On September 2, 2009, the Respondent dismissed the charge for Lack of Jurisdiction. On October 5, 2009, the Petitioner filed a timely Request.
2. The Petitioner uses a wheelchair. On December 5, 2008, the Petitioner attempted to enter Intergovernmental's building. The Petitioner contends Intergovernmental's entrance was not wheelchair-accessible. She further contends Intergovernmental's employees would not assist her in entering the building. As a result, the Petitioner argues Intergovernmental violated her rights to the full and equal enjoyment of a public accommodation, in violation of Section 5-102(C).

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

3. The Respondent determined that it lacked jurisdiction to investigate the Petitioner's charge based on its determination that Intergovernmental was not a "place of public accommodation" as defined by the Act. See 775 ILCS 5/5-101. The Respondent argues that the ... "specific type of facility and service offered by [Intergovernmental] does not fall within the Act's definition of a public accommodation."
4. The Act states: " 'Place of public accommodation' includes, but *is not limited to*..." 775 ILCS 5/5-101(A) (*emphasis added*).
5. Section 5-101(A)(1) – (13) then goes on to specifically identify various types and classes of facilities deemed to be places of public accommodation within the meaning of the Act.

Conclusion

The Commission cannot sustain the Respondent's determination that it lacks jurisdiction to investigate the Petitioner's charge because it does not appear that the Respondent applied the appropriate legal standard when it determined that Intergovernmental was not a "place of public accommodation" within the meaning of the Act.

Section 5-101(A)(1) – (13) lists several classes of locations considered to be "places of public accommodation," but that list is not exhaustive, as indicated by the language... "is not limited to..."

Therefore, assuming the Respondent determined that Intergovernmental or its services were not specifically listed in Sections 5-101(A)(1)-(13), the Respondent should have then determined whether or not Intergovernmental fell within the "broad statutory definition of that term, [place of public accommodation]." See Baksh v. Illinois Human Rights Comm'n, 304 Ill.App.3d 995,1003(1999). Baksh required the Respondent to determine whether or not Intergovernmental was similar to or like the entities that were specifically enumerated in Section 5-101(A)(1)-(13) by examining the nature of the activity taking place at Intergovernmental.

Neither the investigation file nor the Respondent's response provided the Commission with sufficient information from which the Commission could determine whether or not Intergovernmental falls within the broad statutory definition of a place of public accommodation. It did not clearly appear from the Respondent's response that the Respondent had analyzed this matter in accordance with Baksh.

Therefore, in order to determine whether or not Intergovernmental is a "place of public accommodation" within the meaning of the Act, the Respondent shall conduct further investigation to determine the nature of the activities and services offered at Intergovernmental. The Respondent shall then apply the legal standard as herein identified to determine if Intergovernmental falls within the broad statutory definition of the term "place of public accommodation." If the Respondent thereafter determines Intergovernmental to be a "place of public accommodation" within the meaning of the Act, it shall proceed to investigate the charge in accordance with the Act.

However, if the Respondent again dismisses this charge for lacks jurisdiction based on a determination that Intergovernmental is not a “place of public accommodation” within the meaning of the Act, the Respondent shall clearly demonstrate in its subsequent dismissal that it has applied the appropriate legal standard. The Respondent shall specifically identify the factual basis for its determination, including comprehensive information regarding the nature of the activities and services offered at Intergovernmental.

THEREFORE, IT IS HEREBY ORDERED THAT

- (1) The Respondent’s dismissal of the Petitioner’s charge is **VACATED**, and the charge is **REINSTATED** and **REMANDED** to the Respondent for **FURTHER INVESTIGATION** as herein instructed.

This Order is not yet final and appealable.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 28th day of April 2010.

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini